

# OUT OF THE PANDEMIC AND INTO 2022: WHAT'S NEXT FOR EMPLOYMENT LAW?

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Thursday 11 November 2021



# SPEAKERS



Gerri Elliott  
Legal Director, Employment



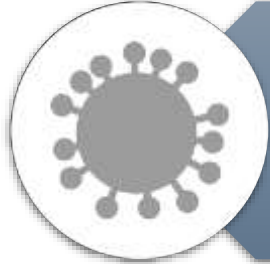
Robert Phillips  
Legal Director, Employment



Erin Shoesmith  
Partner, Health and Safety



# WHAT ARE WE GOING TO COVER?



**Out of the pandemic:** Handling Covid-19 this winter



**Out of 2021:** Recent trends in employment law



**Into 2022:** What's next for employment law?

# 3 WAYS TO HANDLE COVID-19 THIS WINTER

## 1: Vaccinations

Encourage vaccinations and consider testing

## 2: Health & Safety

Keep risk assessments under review

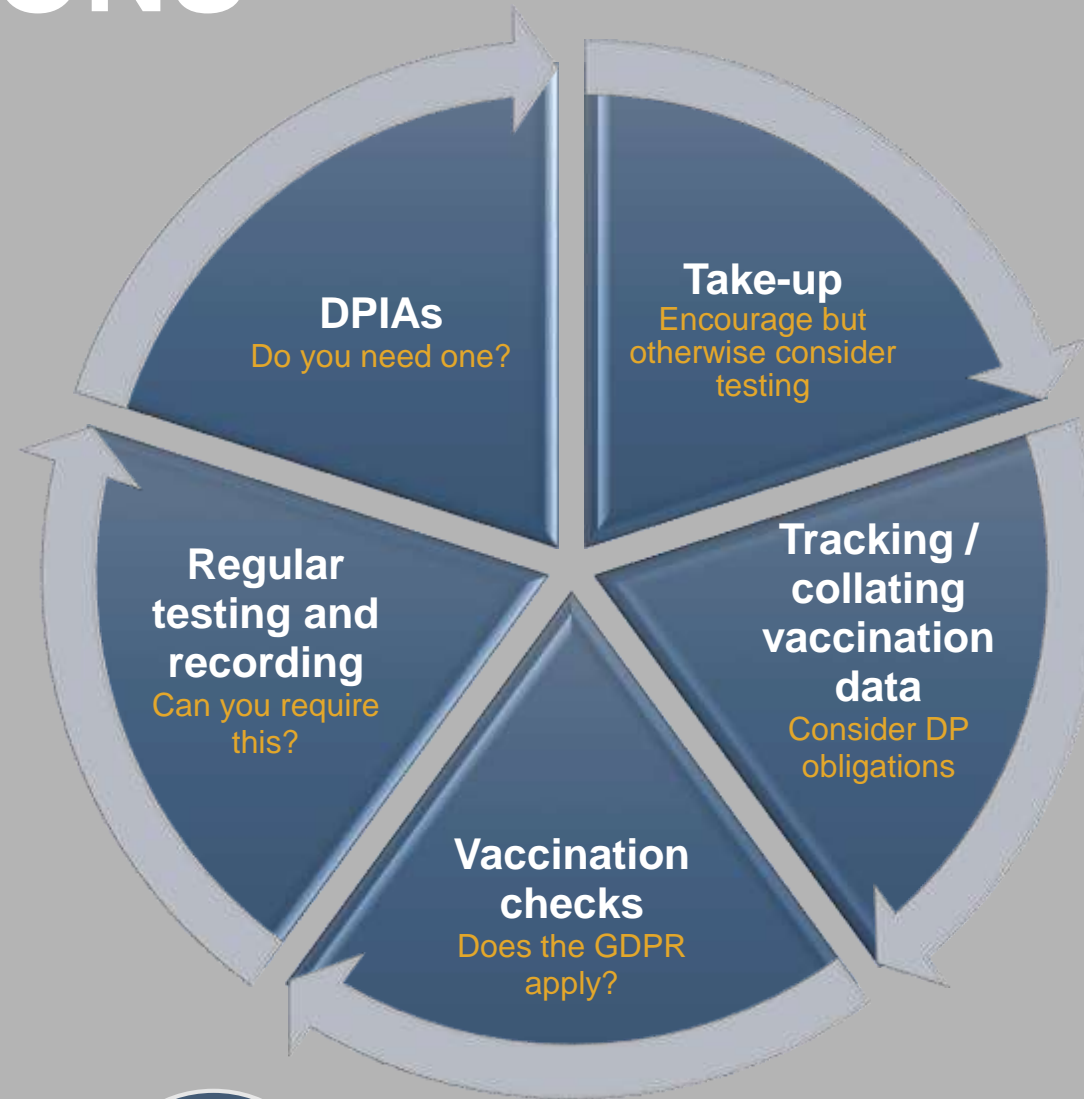
## 3: Dismissals

Fairness and reasonableness is key

1

Out of the pandemic

# VACCINATIONS



1  
Out of the pandemic

# HEALTH AND SAFETY

Vaccinations

Covid Security

HSE Spot Checks  
and Enforcement

Plan B

Hybrid Working

Stress and  
Wellbeing

1

Out of the  
pandemic

# FAIR OR UNFAIR? WAS IT FAIR TO DISMISS FOR...



Not wearing a face mask?



Upset and friction due to H&S duties?



Concerns about commuting to the office during lockdown?



Refusing to attend the home of a self-isolating manager?



Leaving work due to fears about infecting children?

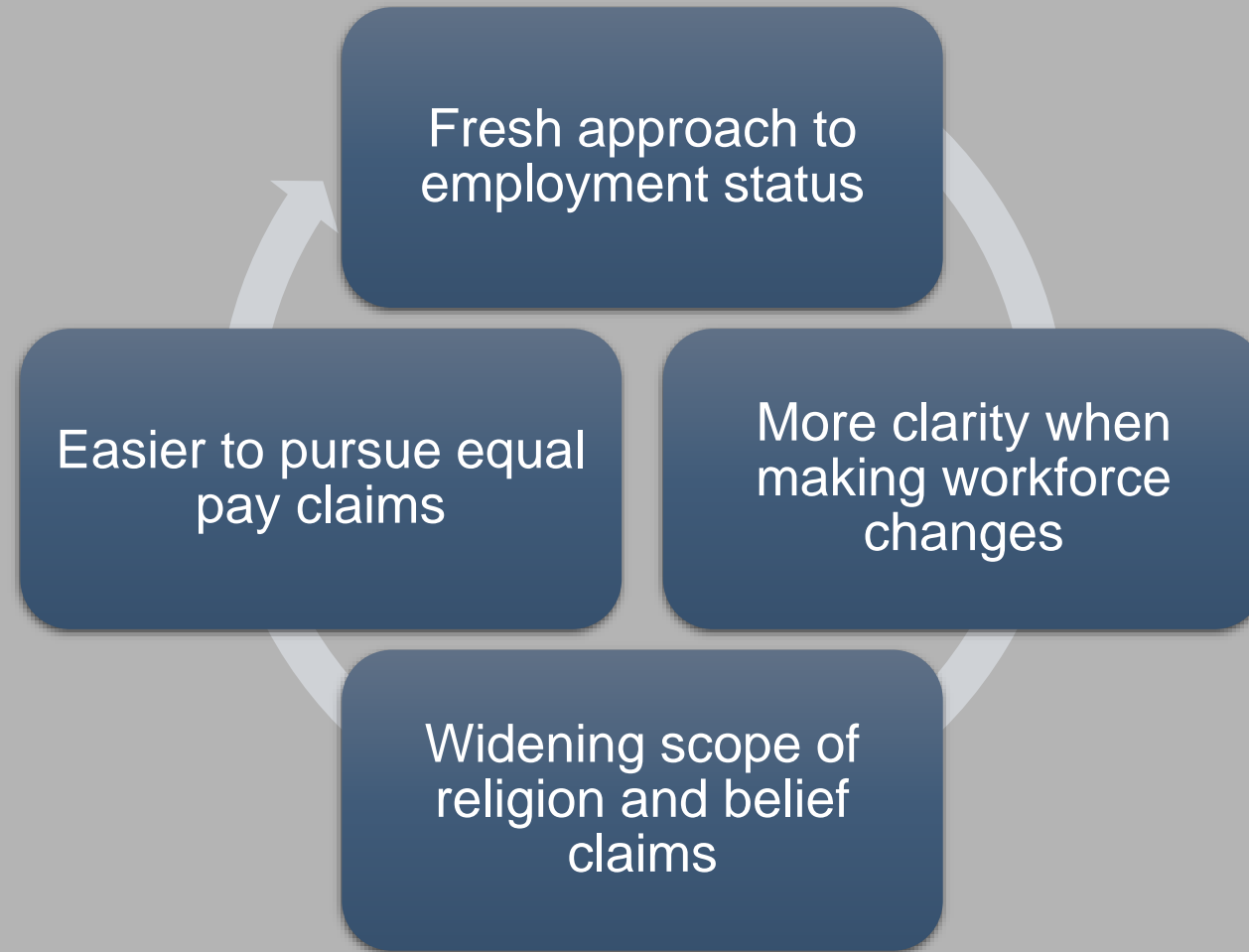


Refusing to return to work to protect vulnerable father?



1  
Out of the pandemic

# OUT OF 2021: 4 RECENT TRENDS IN EMPLOYMENT LAW



2

Out of  
2021



# FRESH APPROACH TO EMPLOYMENT STATUS

1. Look at who the law intends to protect as workers and then look at the facts – contract and conduct

*Uber v Aslam (SC)*

2. Lower threshold for mutuality of obligation

*HMRC v Professional Game Match Officials (CA)*

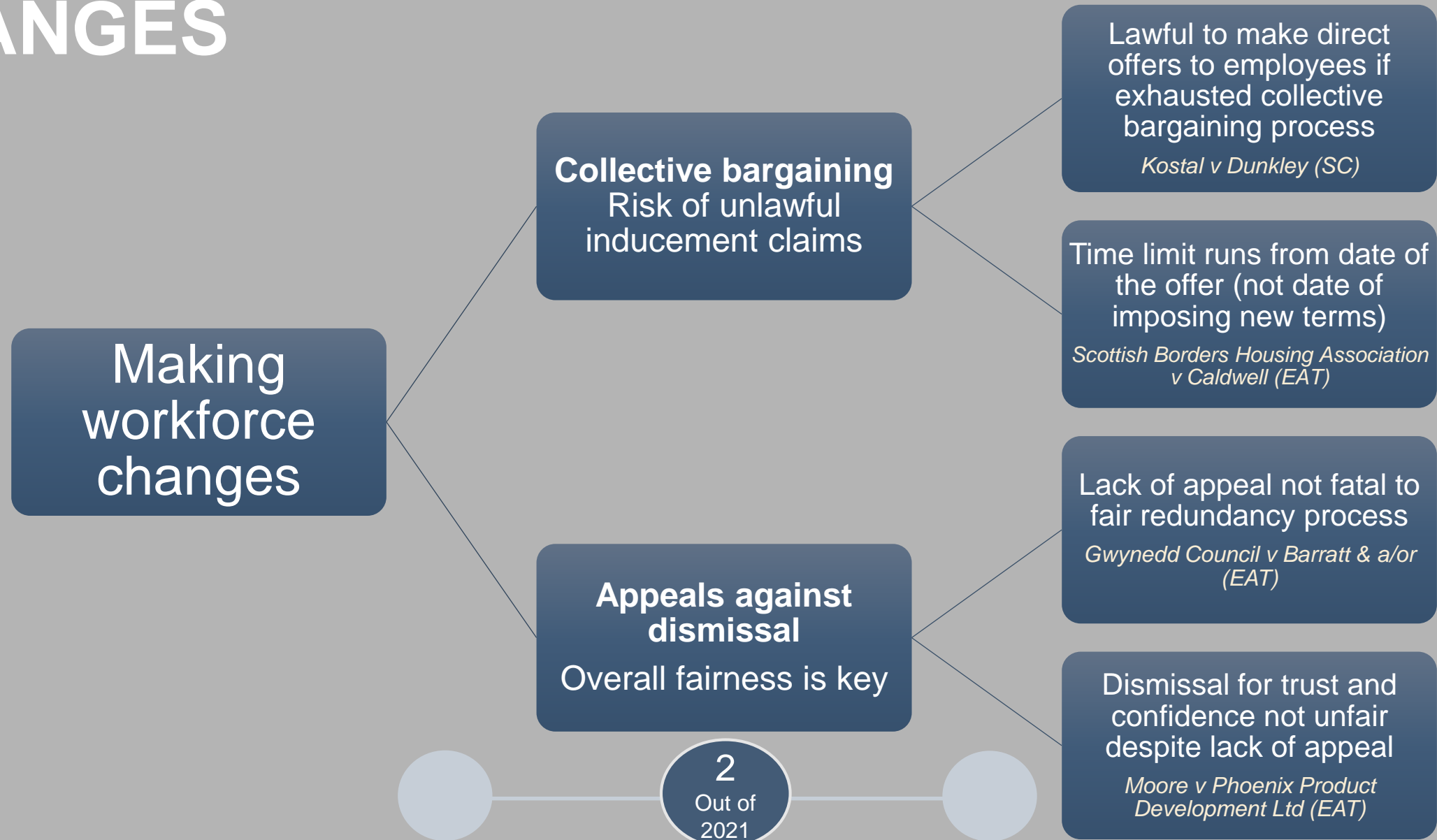
3. Limiting the right to substitute won't remove the obligation to perform work personally

*Stuart Delivery Ltd v Augustine (CA)*

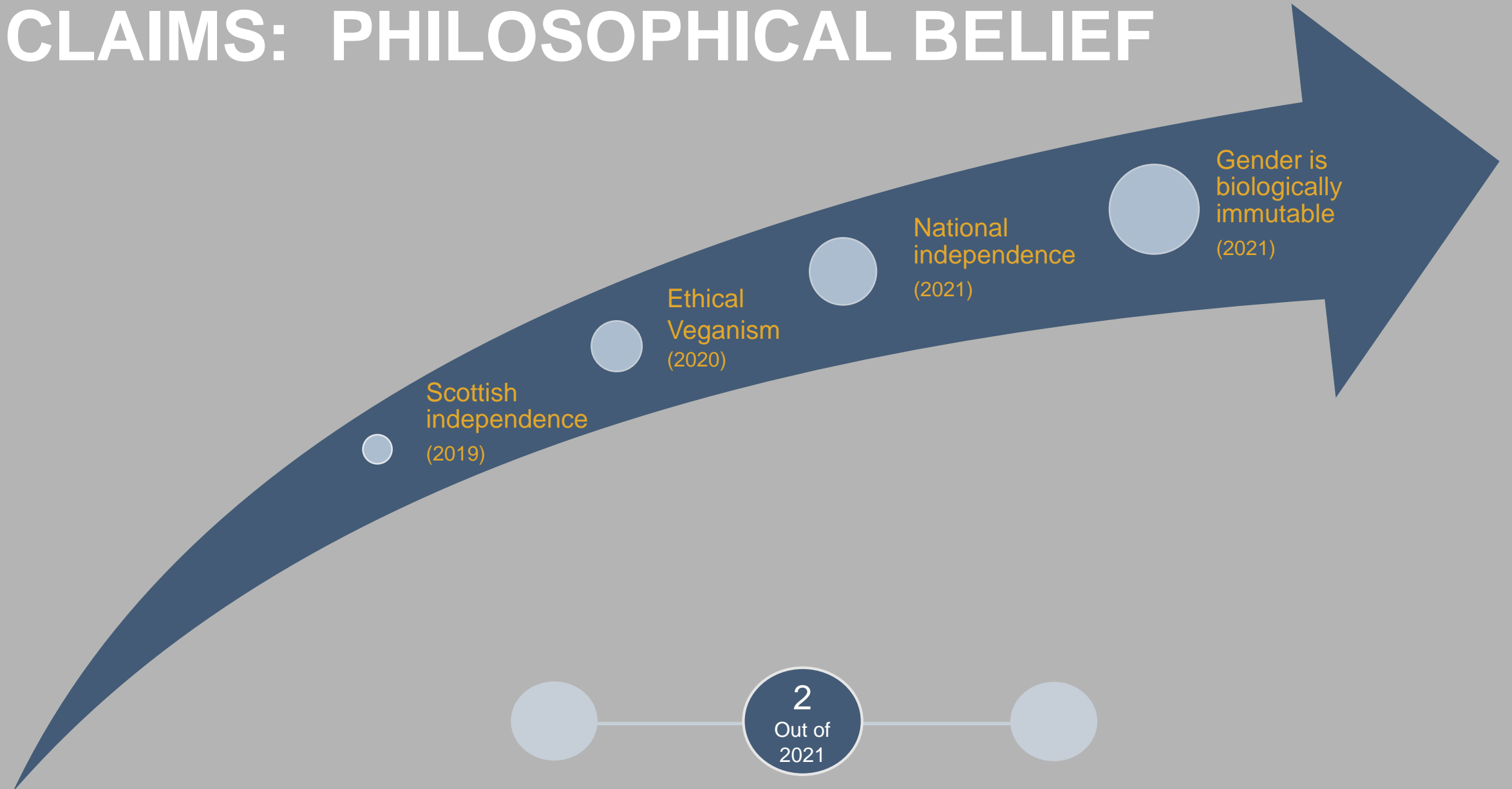
2

Out of  
2021

# MORE CLARITY WHEN MAKING WORKFORCE CHANGES



# WIDENING SCOPE OF RELIGION AND BELIEF CLAIMS: PHILOSOPHICAL BELIEF



# EASIER TO PURSUE EQUAL PAY CLAIMS?

*April 2021*

Retail employees can compare themselves to distribution employees working at different establishments

*Asda Stores Ltd v Brierley and others (SC)*

*March 2021*

Request for disclosure of comparator information in equal value claim was not a "fishing expedition"

*Tesco Stores Ltd v Element and others (EAT)*

*June 2021*

Store employees can rely directly on EU Treaty rights in equal value claims to compare their pay with distribution centre workers

*K and others v Tesco Stores Ltd (ECJ)*

*Equal Pay Audit?*

*Can you justify any gaps? Consider impact of policies / procedures, check and update job descriptions, consider JEV - but also consider privilege*

2

Out of  
2021

# INTO 2022: 8 CHANGES TO WATCH IN 2022

1 Pay reporting

2 Compliance – new single enforcement body

3 Pay – NLW/NMW and NICS increase / health and social care levy

4 Menopause

5 Flexible working – day 1 right

6 Reform of non-compete and exclusivity clauses

7 Families – carer's leave / neonatal leave / extending redundancy protection / SPL reform

8 New duty to prevent sexual harassment (next session)

3

Into  
2022

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Please send any follow up questions to  
[renee.lofthouse@addleshawgoddard.com](mailto:renee.lofthouse@addleshawgoddard.com)

The next session today (*The harassment is over: Recent and future developments in discrimination*) starts at 11.05am – please click separate link